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DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY Joan Segal DATE 1/24/82
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C O N F I D E N T I A L SAIGON 15463

CINCPAC FOR POLAD

SUBJECT: PRESIDENTIAL ELECTION: CHIEF JUSTICE MAKES STATEMENT

REF: A. SAIGON 15243: B. SAIGON 15379

1. SUMMARY AND COMMENT: SUPREME COURT CHIEF JUSTICE TRAN VAN LINH STATED SEPTEMBER 25 THAT THE COURT HAD NOT YET DECIDED ON THE LEGALITY AND VALIDITY OF THE ONE-SLATE PRESIDENTIAL ELECTION, AND NOW HAS A LEGAL CHALLENGE UNDER CONSIDERATION. LINH ASSERTED THE RECENT UPPER HOUSE PROCLAMATION (REF A) CRITICIZING THE ELECTION WAS VAGUE IN ITS RECOMMENDATIONS FOR CHANGES, WHICH, HE SAID, IN ANY EVENT UNDER THE CONSTITUTION AND LAWS MUST BE BROUGHT ABOUT BY THE LEGISLATURE AND THE EXECUTIVE, AND NOT BY THE SUPREME COURT.

2. BESIDES DENYING THE COURT'S RESPONSIBILITY, LINH'S STATEMENT MAY ALSO HAVE BEEN INTENDED TO MAKE CLEAR THE REFERENCE TO THE COURT IN THE EXECUTIVE'S REBUTTAL (REF B) TO THE UPPER HOUSE PROCLAMATION SHOULD NOT BE TAKEN TO MEAN THE QUESTION OF THE VALIDITY OF A ONE-SLATE ELECTION HAS ALREADY BEEN DECIDED. HOWEVER, THERE

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IS CURRENTLY LITTLE PROSPECT THAT THE SUPREME COURT WILL ACTUALLY INVALIDATE THE ELECTION. END SUMMARY AND COMMENT

3. IN AN INTERVIEW WITH VIETNAM PRESS SEPTEMBER 25, CHIEF JUSTICE TRAN-VAN LINH WAS ASKED WHETHER THE SUPREME COURT IN ITS LETTER OF AUGUST 31, 1971 HAD NOT ALREADY OFFICIALLY DECIDED THAT A ONE-SLATE ELECTION WAS LEGAL AND VALID. LINH SAID THAT THIS LETTER REPLIED TO TWO QUESTIONS RAISED IN A LETTER OF AUGUST 28 FROM THE EXECUTIVE: BEGIN QUOTE FIRST, AFTER THE NOTIFICATION

OF ITS WITHDRAWAL BY THE KY-LE LIST, SHOULD IT BE CONSIDERED THAT THERE WERE TWO SLATES OR DID ONLY ONE SLATE REMAIN? SECOND, IN CASE ONLY ONE SLATE REMAINED, HOW DID THE SUPREME COURT BELIEVE THE ACTIVITIES OF THE CENTRAL ELECTION CAMPAIGN COMMITTEE SHOULD BE ORGANIZED? IN REPLY TO THESE TWO QUESTIONS, THE GENERAL ASSEMBLY OF THE SUPREME COURT AUGUST 31 SET FORTH ITS VIEWS: FIRST, IN REALITY THE KY-LE SLATE HAD DECIDED NOT TO PARTICIPATE IN THE ELECTION; SECOND, CONCERNING THE ACTIVITIES OF THE CENTRAL ELECTION CAMPAIGN COMMITTEE, IN THE SITUATION WHERE ONLY ONE SLATE WAS RUNNING IT WAS UP TO THE MINISTRY OF THE INTERIOR TO ADAPT THE APPLICATION OF THE LAW TO THE TRUE CIRCUMSTANCES AS IT SAW FIT. THE EXPRESSION OF VIEWS ON THESE TWO QUESTIONS WAS ABSOLUTELY NOT AN AFFIRMATION OR A DENIAL OF THE LEGALITY OR VALIDITY OF THE FORTHCOMING ELECTION. END QUOTE (QUOTE IS EMBASSY TRANSLATION FROM VIETNAM PRESS ITEM.) LINH ALSO INDICATED SUPREME COURT HAS LEGALITY OF ELECTION UNDER CONSIDERATION (SEE BELOW).

4. ASKED HIS VIEWS ON THE UPPER HOUSE PROCLAMATION OF SEPTEMBER 22 (REF A), CHIEF JUSTICE LINH REPLIED THAT IN GENERAL THE DOCUMENT ONLY BROUGHT TOGETHER OPINIONS PREVIOUSLY EXPRESSED BY A NUMBER OF INDIVIDUALS AND GROUPS. HE ALSO SAID THE MODERATE THREE-POINT RECOMMENDATION DID NOT SEEM MUCH IN ACCORD WITH THE PRECEDING PORTION (WHICH PORTRAYED A CRITICAL SITUATION), AND THE FINAL SENTENCE CALLING ON THE CONSTITUTIONAL POWERS TO REORGANIZE THE ELECTION NEEDED CLARIFICATION AS TO EXACTLY WHAT CHANGES SHOULD BE MADE. LINH STRESSED THAT AMENDMENTS TO THE CONSTITUTION OR TO THE LAW WERE MATTERS WITHIN THE COMPETENCE OF THE LEGISLATURE AND EXECUTIVE, AND SAID IF CHANGES WERE MADE, THE THE SUPREME COURT WOULD IMPLEMENT THEM.

5. PRESS REPORTS INDICATE PROFESSOR BUI NHUNG, AN ASSOCIATE

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OF ERSTWHILE PRESIDENTIAL CHALLENGER DUONG VAN MINH, FILED A CASE WITH THE SUPREME COURT SEPTEMBER 8 CALLING FOR CANCELLATION OF THE PRESIDENTIAL ELECTION ON THE GROUND THAT VARIOUS POINTS IN THE CONSTITUTION AND LAW CONTEMPLATE A CONTESTED ELECTION, AND THE PRESENT ELECTION IS THUS UNCONSTITUTIONAL AND ILLEGAL. REASONING OF CASE IS ALONG FOLLOWING LINES, ACCORDING TO THE PRESS: ARTICLE 52/1 OF THE CONSTITUTION CALLS FOR A DIRECT AND SECRET ELECTION. BUT IF THERE IS ONLY ONE SLATE THE ELECTION BECOMES PUBLIC AND A REFERENDUM, WHICH IS NOT PROVIDED FOR IN THE CONSTITUTION. ARTICLE 54 OF THE CONSTITUTION CALLING FOR CANDIDATES TO RECEIVE EQUAL MEANS IN THE ELECTION CAMPAIGN ALSO CLEARLY INDICATES THE CONSTITUTION DOES NOT ACCEPT A REFERENDUM BUT ONLY A REAL ELECTION WITH AT LEAST TWO SLATES. ARTICLES 18 AND 19 OF THE ELECTION LAW (CONCERNING THE CENTRAL AND LOCAL ELECTION CAMPAIGN COMMITTEE) ALSO CLEARLY INDICATE THAT ONLY AN ELECTION WITH AT LEAST TWO SLATES IS ACCEPTABLE.

6. PRESS REPORTS INDICATE THIS CASE HAS BEEN ACCEPTED BY THE SUPREME COURT BUT WILL NOT BE DECIDED UNTIL AFTER ELECTION DAY. BUNKER

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